

SENATE BILL NO. 489

INTRODUCED BY LIND

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR INVESTIGATIONS AND FEASIBILITY STUDIES EVALUATING THE EXTENT OF CONTAMINATION AND FORMULATING REMEDIATION ALTERNATIVES FOR RELEASES AT CERTAIN FACILITIES FOR WHICH A STATE AGENCY MAY BE LIABLE UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT AND FOR CONDUCTING REMEDIATION ACTIVITIES AT OTHER FACILITIES FOR WHICH THERE ARE NO POTENTIALLY LIABLE PERSONS WHO HAVE THE FINANCIAL RESOURCES TO REMEDIATE THE SITE WITHOUT FINANCIAL ASSISTANCE; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."

Section 2. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

1 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the
2 department may apply to the governor for a grant from the environmental contingency account established
3 pursuant to 75-1-1101.

4 (7) (a) There is established a state special revenue account for all funds donated or granted from private
5 parties to remediate a specific release at a specific facility. There must be deposited into the account the interest
6 income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this
7 account.

8 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated
9 in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to
10 remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

11 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant
12 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial
13 contribution, all donated or granted funds, including any interest on those donated or granted funds, must be
14 returned to the grantor.

15 (d) If the balance for a specific project is determined by the department to be sufficient to remediate the
16 facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial
17 action, using the funds donated under this subsection (7).

18 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions
19 of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to
20 obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial
21 action, and to recover costs and damages incurred by the state.

22 (f) The department shall expend the funds in a manner that maximizes the application of the funds to
23 physically remediating the specific release.

24 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
25 pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result
26 of the contribution of in-kind services.

27 (b) A person who donates in-kind services with respect to remediating a specific release at a specific
28 facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that
29 results from the release or threatened release, including but not limited to claims for indemnification or
30 contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or

1 economic loss.

2 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is
3 caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes
4 intentional misconduct.

5 (d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or
6 threatened release of a hazardous or deleterious substance, the person may not avoid that liability or
7 responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of
8 subsection (7) and this subsection (8).

9 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
10 subsection (8) must be approved by the department as appropriate remedial action.

11 (9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund
12 pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of
13 this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year,
14 transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount
15 remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount
16 appropriated for the next fiscal year from the environmental quality protection fund.

17 (b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to
18 the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

19
20 **Section 3.** Section 75-10-743, MCA, is amended to read:

21 **"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment**
22 **of department costs.** (1) There is an orphan share account in the state special revenue fund established in
23 17-2-102 that is to be administered by the department. Money in the account is available to the department by
24 appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through
25 75-10-751 and, except as provided in ~~subsection (10) subsections (9) and (10) SUBSECTIONS (9) THROUGH (11)~~
26 AND (10), to pay costs incurred by the department in defending the orphan share.

27 (2) There must be deposited in the orphan share account:

28 (a) all penalties assessed pursuant to 75-10-750(12);

29 (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

30 (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided

1 for in 15-38-106;

2 (d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

3 (e) unencumbered funds remaining in the abandoned mines state special revenue account;

4 (f) interest income on the account;

5 (g) funds received from settlements pursuant to 75-10-719(7); and

6 (h) funds received from reimbursement of the department's orphan share defense costs pursuant to
7 subsection (6).

8 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently
9 in the order in which they were received by the department. If the orphan share fund does not contain sufficient
10 money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan
11 share fund, the department, and the state are not liable for making any reimbursement for the costs. The
12 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient
13 money to reimburse claims, and interest may not accrue on outstanding claims.

14 (4) Except as provided in subsection ~~(8)~~ (7), claims may not be submitted and remedial action costs
15 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
16 maintenance, are completed at a facility.

17 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial action
18 costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for
19 attorney fees, legal costs, or operation and maintenance costs.

20 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
21 participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The
22 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share
23 in proportion to the orphan share's allocated share, as follows:

24 (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending
25 the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the
26 orphan share.

27 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation
28 under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs
29 incurred in defending the orphan share in proportion to each person's allocated share of liability.

30 (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan

1 share fund and must be reimbursed as provided in subsection (3).

2 ~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be~~
3 ~~transferred to the general fund.~~

4 ~~(8)(7)~~ If the lead liable person under 75-10-746 presents evidence to the department that the person
5 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will
6 cause undue financial hardship on the person, the department may allow the submission of claims and may
7 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
8 reimbursement unless the person is in substantial compliance with all department-approved remedial action
9 plans.

10 ~~(9)(8)~~ A person participating in the allocation process who received funds under the mixed funding pilot
11 program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
12 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
13 program that are later attributed to the orphan share under the allocation process.

14 ~~(10)(9)~~ For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199,
15 Laws of 2003, the department may transfer funds from the orphan share fund to the environmental quality
16 protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or
17 both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

18 (10) (a) For the biennium beginning July 1, 2005, up to \$1.5 \$1 \$1.25 million may be used by the
19 department of natural resources and conservation to pay the costs INCURRED BY THE DEPARTMENT IN CONTRACTING
20 for investigations and preparation of feasibility studies of EVALUATING THE EXTENT OF CONTAMINATION AND
21 FORMULATING FINAL REMEDIATION ALTERNATIVES FOR releases at facilities for which a state agency may be liable
22 under Title 75, chapter 10, part 7: THE KALISPELL POLE AND TIMBER, RELIANCE REFINERY COMPANY, AND YALE OIL
23 CORPORATION FACILITY COMPLEX. IF THE DEPARTMENT SPENDS LESS THAN \$1.5 \$1 \$1.25 MILLION FOR THOSE
24 PURPOSES, THE REMAINING FUNDS MUST BE SPENT FOR REMEDIATION OF THE FACILITY COMPLEX. THE DEPARTMENT MAY
25 NOT SEEK RECOVERY OF THE \$1.5 \$1 \$1.25 MILLION FROM POTENTIALLY LIABLE PERSONS.

26 (b) The money spent pursuant to subsection (10)(a) must be credited against the amount owed by the
27 state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for
28 which the money was spent.

29 (B) THE MONEY SPENT PURSUANT TO SUBSECTION (10)(A) MUST BE CREDITED AGAINST THE AMOUNT OWED BY
30 THE STATE AGENCY IN A JUDGEMENT OR SETTLEMENT AGREEMENT FOR PAYMENT OF THE REMEDIAL ACTION COSTS AT

1 THE FACILITY FOR WHICH THE MONEY WAS SPENT.

2 ~~(b)(c)~~ THE DEPARTMENT SHALL CONSULT WITH THE NOTICED POTENTIALLY LIABLE PERSONS REGARDING
3 CONTRACTOR SELECTION AND DETERMINATION OF THE SCOPE OF THE WORK FOR CONTRACT TASKS. THE DEPARTMENT
4 SHALL ALSO PROVIDE THE NOTICED POTENTIALLY LIABLE PERSONS WITH CONTRACT PERFORMANCE UPDATES AND SHALL
5 CONSULT WITH THE NOTICED POTENTIALLY LIABLE PERSONS REGARDING EXPENSES AND PROGRESS ON CONTRACT TASKS.

6 ~~(c)(d)~~ THE DEPARTMENT SHALL CONTRACT FOR THE COMPILATION, ASSESSMENT, AND SUMMARIZATION OF THE
7 EXISTING DATA PERTAINING TO THE COMPLEX DESCRIBED IN SUBSECTION (10)(A), FOR RECOMMENDATIONS FOR AND
8 CONDUCTING OF ADDITIONAL INVESTIGATIONS AND STUDIES NECESSARY TO DEVELOP REMEDIATION ALTERNATIVES AND
9 FOR DEVELOPMENT AND ASSESSMENT OF REMEDIATION ALTERNATIVES.

10 ~~(b)(d)(e)~~ THE UNLESS THE DEPARTMENT IS DELAYED BY A CHALLENGE TO A CONTRACTING ACTION, MULTIPLE
11 CONTRACTOR SELECTION PROCESSES, OR OTHER UNANTICIPATED CIRCUMSTANCES, THE ACTIVITIES AUTHORIZED UNDER
12 SUBSECTION (10)(A) MUST MEET THE FOLLOWING SCHEDULE:

13 (i) CONTRACTS FOR INVESTIGATIONS AND STUDIES MUST BE IN PLACE BY AUGUST 31, 2005.

14 (ii) A SUMMARY OF EXISTING DATA MUST BE PREPARED BY ~~OCTOBER~~ DECEMBER 31, 2005.

15 (iii) THE CONTRACT OR CONTRACT TASK ORDER FOR INVESTIGATIONS, STUDIES, AND DEVELOPMENT AND
16 EVALUATION OF FINAL REMEDIATION ALTERNATIVES MUST BE IN PLACE BY APRIL 30, 2006.

17 ~~(iii)(iv)~~ ALL INTENDED FIELD WORK MUST BE COMPLETED BY ~~JULY 31~~ NOVEMBER 30, 2006, AND TO THE EXTENT
18 THAT THIS FIELD WORK INDICATES THAT FOLLOWUP IS NECESSARY, THE FOLLOWUP FIELD WORK MUST BE COMPLETED
19 AS SOON AS POSSIBLE OR ADDRESSED IN THE REPORT THAT MUST BE SUBMITTED PURSUANT TO SUBSECTION ~~(10)(d)~~
20 ~~(10)(f)~~ (10)(g).

21 ~~(iv)(v)~~ THE CONTRACTOR SHALL SUBMIT EVALUATIONS OF THE EXTENT OF CONTAMINATION BY ~~OCTOBER 31,~~
22 2006.

23 ~~(v)(vi)~~ THE CONTRACTOR SHALL SUBMIT FINAL REMEDIATION ALTERNATIVES BY JULY 31, 2007.

24 ~~(c)(e)(f)~~ THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL JOINTLY
25 REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL QUARTERLY DURING THE BIENNIUM THAT BEGINS JULY 1, 2005
26 CALENDAR YEARS 2005, 2006, AND 2007, REGARDING THE PROGRESS BEING MADE TO MEET THE REQUIREMENTS OF
27 SUBSECTION ~~(10)(b)~~ ~~(10)(d)~~ (10)(e). THE JOINT REPORTS REPORT MUST INCLUDE INFORMATION ON EXPENDITURES.

28 ~~(d)(f)(g)~~ IF INVESTIGATIONS COMPLETED UNDER SUBSECTION ~~(10)(b)(i)~~ THROUGH ~~(10)(b)(iv)~~ (10) INDICATE
29 THE NEED FOR ADDITIONAL INFORMATION OR FOR PILOT TESTS AND OTHER RELATED REMEDIAL ACTION PROCESS
30 ACTIVITIES, THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL PREPARE A

1 REPORT IDENTIFYING THE RATIONALE AND ESTIMATED COSTS FOR ADDITIONAL WORK AND PRESENT IT TO THE
2 ENVIRONMENTAL QUALITY COUNCIL DURING THE FALL OF 2006 SPRING OF 2007.

3 (E)(G)(H) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL
4 PROVIDE TO THE ENVIRONMENTAL QUALITY COUNCIL COPIES OF INVESTIGATIONS AND REPORTS COMPLETED PURSUANT
5 TO SUBSECTION (10)(A) (10)(C) (10)(D).

6 —— (11) (A) SUBJECT TO SUBSECTIONS (11)(B) AND (11)(C), FOR THE BIENNIUM BEGINNING JULY 1, 2005, FUNDS
7 FROM THE ORPHAN SHARE ACCOUNT MAY BE USED BY THE DEPARTMENT TO PAY REMEDIATION COSTS AT FACILITIES AT
8 WHICH THERE HAVE BEEN RELEASES AND FOR WHICH:

9 —— (i) THERE ARE NO POTENTIALLY LIABLE PERSONS; OR

10 —— (ii) (A) THE DEPARTMENT DETERMINES THAT SOME OR ALL OF THE POTENTIALLY LIABLE PERSONS DO NOT HAVE
11 SUFFICIENT FINANCIAL RESOURCES TO PAY THE COSTS OF REMEDIATION; AND

12 —— (B) THE DEPARTMENT ENTERS INTO A COST-SHARE AGREEMENT WITH ALL POTENTIALLY LIABLE PERSONS WHOM
13 THE DEPARTMENT DETERMINES HAVE THE FINANCIAL ABILITY TO CONTRIBUTE TO THE REMEDIATION. THE COST-SHARE
14 AGREEMENT MUST PROVIDE THAT THOSE PERSONS WILL PAY A PROPORTIONATE SHARE OF THE REMEDIATION COSTS, AS
15 DETERMINED BY THE DEPARTMENT, TAKING INTO ACCOUNT THEIR ABILITY TO PAY.

16 —— (b) TO BE ELIGIBLE FOR FUNDING UNDER SUBSECTION (11)(A), A FACILITY THAT IS AN ABANDONED MINE SITE
17 MUST HAVE BEEN IDENTIFIED AS A PRIORITY SITE ON THE DEPARTMENT'S PRIORITY MINE SITES LIST.

18 —— (C) THE DEPARTMENT MAY USE FUNDS PROVIDED IN SUBSECTION (11)(A) ONLY IF THE USE:

19 —— (i) WOULD NOT PRECLUDE THE USE OF THE FUNDS UNDER SUBSECTION (1); AND

20 —— (ii) WOULD LEAVE THE ORPHAN SHARE FUND WITH A BALANCE AT THE END OF THE BIENNIUM BEGINNING JULY 1,
21 2005, THAT, WITH ANTICIPATED DEPOSITS, IS ADEQUATE TO FUND THE ANTICIPATED ORPHAN SHARES IN THE ALLOCATION
22 PROCESSES FOR WHICH A PETITION WAS FILED PURSUANT TO 75-10-745 PRIOR TO [THE EFFECTIVE DATE OF THIS ACT]
23 AND ALL FUTURE TRANSFERS AND EXPENDITURES THAT ARE REQUIRED BY LAWS EXISTING ON [THE EFFECTIVE DATE OF
24 THIS ACT]."

25
26 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2005.

27 - END -